

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

September 24, 2001

BANGOR HYDRO-ELECTRIC COMPANY
Request for Approval of Alternative Rate Plan

Docket No. 2001-410

MAINE PUBLIC UTILITIES COMMISSION
Standard Offer Bidding Procedure

Docket No. 2001-399

ORDER DENYING
REQUEST FOR
RECONSIDERATION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we deny Bangor Hydro-Electric Company's Request for Reconsideration and Request for Hearing in the above-referenced matters and thus affirm our Order Rejecting Standard Offer Proposal issued on September 5, 2001 in Docket No. 2001-410.

II. BACKGROUND

As part of our order approving the proposed merger between Bangor Hydro-Electric Company (BHE or Company) and Emera, Inc., we directed BHE to file an Alternative Rate Plan or "ARP" proposal. On July 31, 2001, BHE submitted what it referred to as an "All-In ARP" proposal. As part of its "All-In ARP," the Company proposed that it be designated as the standard offer provider for the Company's small and medium customer classes for a period of four years, commencing on March 1, 2002. The Company stated that as part of its "All-In ARP" it was willing to provide service at 5.5¢/kWh subject to revision at the time a detailed term sheet was executed with its "preferred supplier." Under the Company's proposal, it would bear the risk of any profit or loss on standard offer service and would have the right to reduce standard offer prices for any customer or rate class during the term of the ARP. Given the Company's statements concerning the need for quick action on the power supply component of its proposal, the Examiner issued an expedited schedule to address the underlying legal and policy issues. Briefs were submitted by the Intervenor opposing the Company's proposal on July 24, 2001 and by the Company in support of its proposal on July 31, 2001; Intervenor reply briefs were filed on August 7, 2001.

On September 5, 2001, we issued our decision rejecting the Company's standard offer proposal. In that Order, we held that under the provisions of 35-A M.R.S.A. § 3212, before default standard offer service can be awarded to a T&D utility, the Commission must first conduct a bid process and either not receive any bids or not receive any acceptable bids. Since the Commission was in the process of assessing

bids from competitive service providers in response to the Commission's Request for Proposals (RFP) issued on July 19, 2001, we could not, at that time, conclude that the bids we received were unacceptable. Although we did not address the issue of whether it would ever be lawful to include a profit incentive mechanism as part of a requirement that the T&D utility provide default standard offer service, in rejecting BHE's proposal we noted the strong reservations we would have in allowing a T&D utility to profit from the provision of default standard offer service. This was due to the Legislature's commitment to an open competitive market, the specific statutory restrictions imposed by the Legislature on a T&D company's role in the competitive generation market, and the possible chilling effect that allowing the incumbent T&D utility to provide generation service on a profit basis could have on the market.

Also on September 5, BHE filed a request for reconsideration of our Order and a request for hearing on its proposal in Docket No. 2001-399. In its requests, BHE argues that the PUC may require BHE to provide standard offer service if it finds that the bids to provide retail standard offer service are "inadequate or unacceptable." The Company states:

[T]he Act provides that in the event that the PUC determines retail Standard Offer bids are "inadequate or unacceptable," the PUC may require BHE "to arrange and to provide for" Standard Offer service. In essence, BHE may provide SO service if the retail Standard Offer bids are unreasonably high. Implicit in this statutory scheme, is the assumption that any Standard Offer service arranged by BHE should be at the lowest reasonable cost.

The Company goes on to argue that its "All-In ARP" proposal will result in the lowest standard offer rates. Although the Company believes the risks and rewards to its shareholders incorporated into its July 31st proposal are appropriate, BHE, as part of its Request for Reconsideration and Hearing, offers a new proposal to provide standard offer service on an "actual cost" basis at approximately 4.5¢/kWh without shareholder risk. Finally, the Company notes in its requests that if its "actual cost" proposal were accepted, BHE would need to be compensated for making its balance sheet available as an asset which is considered by suppliers when they assess the risk of default on any payments owed for energy supplied under a wholesale agreement.

III. DECISION

BHE's requests are based on two premises: first, that the competitive power supply markets are not working; and second, that BHE is uniquely situated and can provide standard offer service at lower prices than competitive energy providers. We do not accept either of these propositions. Therefore, and for the additional reasons set forth below, we deny BHE's requests for reconsideration and for hearing.

With respect to BHE's competitive market premise, current information available to the Commission indicates that the forward prices for electricity in the wholesale market are both coming down and becoming less volatile in reaction to external events, thus indicating a more mature and robust competitive wholesale market. In the retail market, we are already seeing vigorous competition in the middle customer class throughout the State. In BHE's service territory, the number of customers being served by competitive electricity providers has tripled in the past year and the percentage of load, measured in terms of kWh sales served by competitive providers, has grown from 2% to 18%. In Central Maine Power Company's service territory, medium customer class load served by competitive providers has grown from 9% to 30% over the past year.¹ While retail competition does not yet exist for small customers, the expectation has always been that this would be the last market to develop. Furthermore, accepting BHE's proposal would make its judgment about this market a self-fulfilling prophecy.

We also do not accept the proposition that BHE is in a better position to provide standard offer service than competitive providers in the market. While BHE has provided us with prices in both its initial "All-In ARP" "risk/reward" proposal and now in the alternative "actual cost" proposal, the prices are not even purportedly "firm" prices upon which the Commission would base a judgment. Moreover, since those prices are expressly linked to other aspects of the "All-In ARP," including T&D price increases, they provide no basis for "apples to apples" comparison with prices contained in bids submitted to us under our standard offer bid process.

The Company has stated that the price under its alternative wholesale proposal would be "approximately 4.5¢/kWh." The Company has added, however, that if the Commission were to adopt this alternative approach, the Company would have to be compensated by an undetermined sum for the "use of its balance sheet" in purchasing the power. Most importantly, under the Company's alternative "actual cost" proposal, BHE's customers would continue to bear the risk of losses related to changes in load and for changes in the ICAP market. Thus, it is far from certain that the price consumers would ultimately have to pay under BHE's actual cost proposal would not be significantly greater than the 4.5¢/kWh quoted by BHE in its requests.

Both the Company's original "risk/reward" proposal and its "actual cost" proposal are not equivalent to bids provided in response to our RFP in several other respects. First, both of the Company's standard offer proposals are tied to the rest of the Company's ARP proposal. Thus, a "lower" standard offer price tied to these other ARP proposals may come at a considerable cost to ratepayers when all aspects of the ARP are considered and certainly the standard offer prices do not provide an "apples to apples" comparison with the standard offer bids submitted in response to our RFP. In addition, there are clearly some aspects of the Company's ARP which are "novel" and are likely to be contested in the ARP proceeding (e.g., the Company's proposal to apply

¹This information is taken from reports filed by BHE and CMP with the Commission and published by the Commission on our web page.

its price index increase retroactively prior to the start of the ARP). Such proposals would require a full airing before they could be adopted.

Second, the Company's proposal is for four years while our RFP asked for bids for standard offer service of one to three years. The Legislature has mandated that standard offer service be available through March 1, 2005. By June 30, 2004, we must have concluded an investigation of whether the continued existence of the standard offer is necessary and in the public interest and submit such results to the Legislature as part of our annual restructuring report. Accepting the Company's four-year proposal would commit the Commission to the continued existence of the standard offer program beyond the mandated date for such service for a time period when the continued availability of standard offer service may have been determined by the Commission or the Legislature not to be in the public interest.

BHE has not presented us with any information to demonstrate that it can provide standard offer service at prices below those offered by competitive providers. Even if the Company were able to demonstrate that its prices were lower than those provided in response to our RFP, however, we would not as a matter of course designate BHE as the standard offer provider. In our decision of September 5, 2001, we concluded that:

To award default service to the utility, the Commission must first conduct a bid process and either not receive any bids or not receive any acceptable bids. It was on this basis that we designated BHE as the default service provider both in 2000 and 2001 ...

The Commission has received bids from interested competitive service providers in response to our RFP. At this point, it would be premature to judge whether these bids will produce standard offer prices which we find acceptable. After we have gone through the bid process, it is possible that we may determine that the bids are not acceptable and that BHE should continue to be required to provide default standard offer service. Such a conclusion, however, cannot be made at this time.

The RFP bid process we have established to obtain standard offer service for Maine consumers is a competitive process and is, in fact, part of the process of establishing competitive markets in Maine. A standard offer price from a T&D utility which is slightly less than the prices offered by competitive electricity providers in response to our RFP request does not necessitate a finding that the bids in response to the RFP were unacceptable.

In restructuring the electric utility industry in Maine, both the Legislature and this Commission have taken a long-run approach to obtaining the benefits of the competitive market for consumers in Maine and have attempted to avoid "quick-fixes" adopted in

some other states. As we discussed in our September 5th Order, the Legislature has limited the role that the T&D utilities can play in the competitive market. We do not believe this approach should be abandoned here by trying to capture what would appear to be minimal, if any, short-term benefits at the risk of foreclosing the development of an open competitive market with long-term benefits for Maine consumers. In the final analysis, we find BHE's proposal to be inconsistent with the underlying objective of electric restructuring, and we thus reject its requests for reconsideration and hearing.

Accordingly, it is

ORDERED

That Bangor Hydro-Electric Company's Request for Reconsideration and Request for Hearing in Docket Nos. 2001-410 and 2001-399 are hereby denied.

Dated at Augusta, Maine, this 24th day of September, 2001.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.